

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

---

IN RE:	:	Master File 06-MD-1775 (JG) (VVP)
AIR CARGO SHIPPING SERVICES	:	<b>ALL CASES</b>
ANTITRUST LITIGATION	:	Oral argument will be on a date and at a time to be designated by the Court.
MDL No. 1775	:	

---

**OBJECTION TO REPORT AND RECOMMENDATION  
FILED SEPTEMBER 26, 2008**

Plaintiffs object to the Report and Recommendation of Magistrate Judge Viktor V. Pohorelsky, filed September 26, 2008, in the above-captioned action, to the extent that it granted defendants' motions under Federal Rule of Civil Procedure 12(b)(6) to dismiss plaintiffs' First Consolidated Amended Complaint (the "Complaint") on the ground that it failed to meet the pleading requirements under Federal Rule of Civil Procedure 8(a)(2). This issue is discussed in the Report and Recommendation at pages 6-21. The bases for plaintiffs' objection are: (1) as conceded by defendants, the Complaint states a plausible conspiracy;<sup>1</sup> (2) the Report and Recommendation adopted an erroneous pleading standard for establishing a violation of Sherman Act § 1, 15 U.S.C. § 1; and (3) the Report and Recommendation requires unnecessary detail in the Complaint. Plaintiffs request that this Court deny defendants' motions to dismiss the Complaint for failure to state a claim.

---

<sup>1</sup> Moreover, as set forth in the Report and Recommendation, nine defendants have pled guilty to criminal charges brought by the United States Department of Justice ("DOJ") involving allegations asserted in this litigation and defendants Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd. are in the DOJ's leniency program for price-fixing activity and other conduct in the air cargo industry in the United States and elsewhere.

In the event that the Court does not deny defendants' motions to dismiss the Complaint for failure to state a claim, plaintiffs do not object to the dismissal being without prejudice and with leave to replead under Federal Rule of Civil Procedure 15(a). This issue is discussed in the Report and Recommendation at pages 84-85.

In support of their objection, plaintiffs submit Plaintiffs' Memorandum of Law in Support of Their Objection to the Report and Recommendation of September 26, 2008 Regarding Plaintiffs' Purported Failure To State a Claim under Rule 8(a)(2).

The record to be considered by the Court on this objection is:

1. Transcript of Court Conference of May 31, 2007 (Docket No. 785);
2. Defendants' Notice of Motion To Dismiss Plaintiffs' First Consolidated Amended Complaint, dated July 18, 2007 (Docket No. 500);
3. Memorandum of Law in Support of Defendants' Motion To Dismiss, dated July 18, 2007 (Docket No. 501);
4. Appendix of Unreported Cases and Other Materials on Defendants' Motion To Dismiss Plaintiffs' First Consolidated Amended Complaint, Volume I, dated July 18, 2007 (Docket No. 505);
5. Plaintiffs' Memorandum of Law in Opposition to Defendants' and Ethiopian's Motions To Dismiss Under Rule 12(b)(6) for Failure To State a Claim and under the Statute of Limitations, dated August 22, 2007 (Docket No. 563);
6. Reply in Support of Defendants' Motion To Dismiss, dated January 4, 2008 (Docket No. 674);
7. Appendices of Unreported Cases on Reply in Support of Defendants' Motion To Dismiss, Volumes I – III, dated January 4, 2008 (Docket No. 676);
8. Transcript of Hearing of April 29, 2008 (Docket No. 786);
9. Letter from Plaintiffs, dated June 26, 2008 (Docket No. 766); and
10. Report and Recommendation, filed September 26, 2008 (Docket No. 787).

Dated: New York, New York  
October 14, 2008

Respectfully submitted,

Robert N. Kaplan (RK-3100)  
Gregory K. Arenson (GA-2426)  
**KAPLAN FOX & KILSHEIMER LLP**  
850 Third Avenue, 14th Floor  
New York, NY 10022  
(212) 687-1980

Gary L. Specks (GS-8767)  
**KAPLAN FOX & KILSHEIMER LLP**  
1655 Lake Cook Road, Suite 139  
Highland Park, IL 60035  
(847) 831-1585

By: /s/ Robert N. Kaplan

*Co-Lead Counsel*

Hollis L. Salzman (HS-5994)  
Gregory S. Asciolla (GA- 2222)  
Morissa R. Falk (MF-2418)  
Benjamin D. Bianco (BB-5188)  
**LABATON SUCHAROW LLP**  
140 Broadway  
New York, NY 10005  
(212) 907-0700

By: /s/ Hollis L. Salzman

*Co-Lead Counsel*

Howard J. Sedran  
Austin B. Cohen  
**LEVIN, FISHBEIN, SEDRAN & BERMAN**  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106-3697  
(215) 592-1500

By: /s/ Howard J. Sedran

*Co-Lead Counsel*

Michael D. Hausfeld  
Charles E. Tompkins  
Andrea L. Hertzfeld  
Besrat Gebrewold  
Andrew B. Bullion  
Hilary K. Ratway  
**COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.**  
1100 New York Avenue N.W.  
Washington, D.C. 20005  
(202) 408-4600

By: /s/ Michael D. Hausfeld

*Co-Lead Counsel and Co-Lead Counsel Principally Responsible for the Foreign Claims*

Christopher Lovell (CL-2595)  
Imtiaz A. Siddiqui (IS-4090)  
**LOVELL STEWART HALEBIAN LLP**  
500 Fifth Avenue  
New York, NY 10110  
(212) 608-1900

By: /s/ Christopher Lovell

*U.S. Indirect Purchaser Counsel*

W. Joseph Bruckner  
**LOCKRIDGE GRINDAL NAUEN P.L.L.P.**  
100 Washington Avenue South  
Minneapolis, MN 55401-2197  
(612) 339-6900

By: /s/ W. Joseph Bruckner

*U.S. Indirect Purchaser Counsel*

Joseph W. Cotchett  
Steven N. Williams (SW-6918)  
**COTCHETT, PITRE & MCCARTHY**  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
(650) 697-6000

By: /s/ Steven N. Williams

*U.S. Indirect Purchaser Counsel*

Craig C. Corbitt  
**ZELLE, HOFMANN, VOELBEL,  
MASON & GETTE LLP**  
44 Montgomery Street, Suite 3400  
San Francisco, CA 94104  
415-693-0700

By: /s/ Craig C. Corbitt

*U.S. Indirect Purchaser Counsel*

**CERTIFICATE OF SERVICE**

I, Gregory K. Arenson, declare that, on October 14, 2008, I caused true and correct copies of the Objection to Report and Recommendation Filed September 26, 2008 to be delivered via the Court's ECF system to all counsel of record.

/s/ Gregory K. Arenson

Gregory K. Arenson